Michigan Trust Co. v. *Ferry*, 228 U. S. 346, 57 L. Ed. 867;
New York Life Ins. Co. v. *Dunlevy*, 241 U. S. 518, 60 L. Ed. 1140;
McDonald v. *Mabee*, 243 U. S. 90, 61 L. Ed. 608;
Flexner v. *Farson*, 248 U. S. 289, 63 L. Ed. 250.

We distinguish all cases involving corporate defendants because corporations have none of the rights of citizens upon which this defendant relies.

We distinguish all cases involving a written instrument signed by defendant which, perhaps, appointed an agent for service or, perhaps, consented to some method of service, because no such instrument is involved in the present appeal.

We distinguish all cases involving consent of the defendant because the statute is in no way based upon consent, either actual or implied.

We distinguish:

Hendrick v. *Maryland*, 235 U. S. 610, 59 L. Ed. 385;
Kane v. *New Jersey*, 242 U. S. 160, 61 L. Ed. 222;
Hess v. *Pawloski*, 274 U. S. 352, 71 L. Ed. 1091;
Wuchter v. *Pizzutti*, 276 U. S. 13, 72 L. Ed. 446;

because in each and all of these cases the defendant was actually, personally, physically present within the State asserting jurisdiction, and was present at the transaction from which the cause of action arose. In these cases the defendant was within the boundaries of, and physically subject to, the jurisdiction of the State, subject to arrest if need be. Either by his personal entrance and use of the State highways the defendant consented to the jurisdiction of the State or the State actually seized and the defendant asserted its jurisdiction and let him go subject to such jurisdiction.

Perhaps the opinion in *Hess* v. *Pawloski* does not clearly show that Hess was personally driving his car when the accident occurred. At least Goodman argued it does not. The two opinions of the Massachusetts court at 149 N. E. 122 and 144 N. E. 760, and the record on which the opinion of the Supreme Court of the United States was based foreclose all debate on this point. Hess personally was driving his car in Massachusetts.

Section 11079 is based upon no special police power, applies to no special business, is not called into action by a precedent use of the State's highways or other property. There is no requirement of consent, actual or implied, from conduct or acquiesence. Sweeping in its terms, it makes every citizen of every State in the Union personally subject to the jurisdiction of the courts of Iowa if the plaintiff can find an agent within Iowa upon whom a notice can be served. It holds that a citizen of another State remaining in his own State is personally subject to the jurisdiction of Iowa if he maintains an agent in Iowa. In not one of the similar cases where jurisdiction in the State has been denied has any such broadcast jurisdiction been asserted.

This case forms one of the long chain of cases following *Pennoyer* v. *Neff* in which the constitutionality of a State statute seeking to give the State courts jurisdiction over a non-resident is the sole question involved.

The Supreme Court of the United States has always insisted upon its jurisdiction to pass upon this question.

Respectfully submitted,

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(5537-C)

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Supreme Court of the United States

OCTOBER TERM 1934.

No. 469

HENRY L. DOHERTY & COMPANY, *Appellant,*

vs.

FRANK GOODMAN, *Appellee.*

APPEAL FROM THE SUPREME COURT OF THE STATE OF IOWA.

APPELLANT'S BRIEF AND ARGUMENT.

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OPINION BELOW.

The opinion of the Iowa Supreme Court in *Goodman vs. Doherty* was handed down June 23, 1934, and became final when the time for serving notice of intention to ask for rehearing expired thirty days thereafter. The opinion is not yet officially reported in the Iowa Reports, but is printed at Page 19 of the record and also at 255 Northwestern Reporter 667.

The majority opinion does not discuss the questions at bar. By a seven to two majority the court held that *stare decisis* required it to follow the opinion in *Davidson vs. Doherty*, 214 Iowa 739 decided March 8, 1932.

The *Davidson* case involved two services, one in all respects similar to the service at bar, the other quite different and not here in issue. The court by a five to four majority sustained the service. The *Davidson* appeal was from an interlocutory order, hence, could not be further appealed to this court. Since the *Davidson* opinion is the only opinion showing the decision of the Supreme Court of Iowa on the questions now at issue, it is printed in full as an appendix to this brief.

JURISDICTION.

Paragraph 1 of Rule 12 was complied with and probable jurisdiction has been noted.

STATEMENT OF CASE.

The facts are not disputed and are shown by a stipulation (Transcript Page 12).

At all times material, Frank Goodman was a resident and citizen of Des Moines, Polk County, Iowa. Henry L. Doherty was a resident and citizen of New York City, New

York, and of the United States. So far as is material, Doherty never was within the State of Iowa.

Section 11079 of the 1927 Code of Iowa read:

> "Actions arising out of agency. When a corporation, company, or individual has, for the transaction of any business, an office or agency in any county other than that in which the principal resides, service may be made on any agent or clerk employed in such office or agency, in all actions growing out of or connected with the business of that office or agency."

Doherty had an office or agency in Des Moines, Polk County, Iowa. Goodman had a claim (the merit of which is not here in issue) against Doherty which grew out of, and was connected with that office or agency. Goodman brought action against Doherty for $167.50 and no other relief. He asked no relief *in rem* or *quasi in rem;* no attachment or garnishment, nothing but a personal money judgment. (The petition, Transcript Page 8).

This action was brought in the Polk County District Court which sits at Des Moines.

Under Iowa practice a court acquires jurisdiction through the service of what our statutes call a notice and lawyers habitually call an "original notice".

The original notice in this case was directed to Henry L. Doherty & Company and the return shows how it was served. (Transcript Page 11).

> "I served the same on the defendant, Henry L. Doherty & Company, said Henry L. Doherty & Company being one and the same person as Henry L. Doherty who is engaged in business under the name and style of Henry L. Doherty & Company, by reading said notice to E. A. King, State Manager, and by delivering to him a true copy of the same, all done in Des Moines Township, Polk County, Iowa, the said Henry L. Doherty and/or Henry L. Doherty & Company being a non-resi-

dent of Polk County, Iowa, but having an office and agency in the said County of Polk for the transaction of his business, and the said E. A. King being an agent and Clerk employed by the said Henry L. Doherty in said office."

The petition names the defendant as Henry L. Doherty & Company, but alleges that this is a trade-name under which one Henry L. Doherty, is doing business.

Both parties agree that Henry L. Doherty, the individual, is the one and only defendant. Iowa recognizes the right of an individual to do business under a trade-name and Goodman claims nothing because he added "& Company" to the defendant's name.

Doherty filed special appearance (Transcript Page 11) attacking the jurisdiction of the court. This is the Iowa equivalent of a motion to quash service. He set up the facts as above recited and denied the jurisdiction of the court, on four grounds:

I. Properly construed Section 11079 applied only to defendants who maintained an office or agency in one county, and resided in another county in Iowa, and did not apply to non-residents of Iowa who had always remained outside of Iowa even though they maintained an office in Iowa.

II. If construed to apply to non-residents of Iowa, the statute was repugnant to Section Two of Article Four of the Constitution of the United States and invalid.

III. If construed to apply to non-residents of Iowa, the statute was repugnant to Section One of the Fourteenth Amendment to the Constitution of the United States and invalid.

IV. Doherty had never been in Iowa. No statute and no act of Iowa could give that state personal jurisdiction over the citizen of another sovereign who had never been within Iowa.

The facts were stipulated by the parties and the trial